

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 270

Citations Affected: IC 6-2.5-7-5; IC 8-14-2; IC 15-9-5.

Synopsis: Flexible fuel vehicle incentives. Conference committee report for ESB 270. Increases the amount of the additional sales tax allowance for sales tax collected on the sale of E85 from \$0.10 per gallon to \$0.18 per gallon. Reduces the maximum amount of increased allowances that may be allowed from \$2,000,000 to \$1,000,000. Extends the period of time in which the additional E85 allowance may be claimed. Provides a monthly incentive payment to a political subdivision if 75% of the fuel used in the political subdivision's E85 compatible motor vehicles is E85. Establishes an E85 fueling station grant program. Appropriates \$1,000,000 to the department of agriculture for the grant program. **(This conference committee report: (1) changes the rate of the sales tax deduction for sales of E85 from \$0.10 to \$0.18; (2) requires recipients of E85 fueling station grants to comply with any guidelines developed by the state department of agriculture's office of energy and defense development (OEDD); (3) requires OEDD to determine the amount of each E85 fueling station grant; and (4) provides that the amount of an E85 fueling station grant may not exceed the lesser of \$5,000 or the applicant's qualified investment.)**

Effective: July 1, 2007; January 1, 2008.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 270 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 6-2.5-7-5, AS AMENDED BY P.L.122-2006,
- 3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2007]: Sec. 5. (a) Each retail merchant who dispenses
- 5 gasoline or special fuel from a metered pump shall, in the manner
- 6 prescribed in IC 6-2.5-6, report to the department the following
- 7 information:
- 8 (1) The total number of gallons of gasoline sold from a metered
- 9 pump during the period covered by the report.
- 10 (2) The total amount of money received from the sale of gasoline
- 11 described in subdivision (1) during the period covered by the
- 12 report.
- 13 (3) That portion of the amount described in subdivision (2) which
- 14 represents state and federal taxes imposed under this article,
- 15 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.
- 16 (4) The total number of gallons of special fuel sold from a
- 17 metered pump during the period covered by the report.
- 18 (5) The total amount of money received from the sale of special
- 19 fuel during the period covered by the report.
- 20 (6) That portion of the amount described in subdivision (5) that
- 21 represents state and federal taxes imposed under this article,
- 22 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

(7) The total number of gallons of E85 sold from a metered pump during the period covered by the report.

(b) Concurrently with filing the report, the retail merchant shall remit the state gross retail tax in an amount which equals five and sixty-six hundredths percent (5.66%) of the gross receipts, including state gross retail taxes but excluding Indiana and federal gasoline and special fuel taxes, received by the retail merchant from the sale of the gasoline and special fuel that is covered by the report and on which the retail merchant was required to collect state gross retail tax. The retail merchant shall remit that amount regardless of the amount of state gross retail tax which he has actually collected under this chapter. However, the retail merchant is entitled to deduct and retain the amounts prescribed in subsection (c), IC 6-2.5-6-10, and IC 6-2.5-6-11.

(c) A retail merchant is entitled to deduct from the amount of state gross retail tax required to be remitted under subsection (b) the amount determined under STEP THREE of the following formula:

STEP ONE: Determine:

(A) the sum of the prepayment amounts made during the period covered by the retail merchant's report; minus

(B) the sum of prepayment amounts collected by the retail merchant, in the merchant's capacity as a qualified distributor, during the period covered by the retail merchant's report.

STEP TWO: Subject to subsection (d), for reporting periods ending before July 1, ~~2008~~, **2020**, determine the product of:

(A) ~~ten~~ **eighteen** cents (~~\$0.10~~); (**\$0.18**); multiplied by

(B) the number of gallons of E85 sold at retail by the retail merchant during the period covered by the retail merchant's report.

STEP THREE: Add the amounts determined under STEPS ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c) STEP TWO may not exceed ~~two~~ **one** million dollars (~~\$2,000,000~~) (**\$1,000,000**) for all retail merchants in all reporting periods. A retail merchant is not required to apply for an allocation of deductions under subsection (c) STEP TWO. If the department determines that the sum of:

(1) the deductions that would otherwise be reported under subsection (c) STEP TWO for a reporting period; plus

(2) the total amount of deductions granted under subsection (c) STEP TWO in all preceding reporting periods;

will exceed ~~two~~ **one** million dollars (~~\$2,000,000~~), (**\$1,000,000**), the department shall publish in the Indiana Register a notice that the deduction program under subsection (c) STEP TWO is terminated after the date specified in the notice and that no additional deductions will be granted for retail transactions occurring after the date specified in the notice.

SECTION 2. IC 8-14-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 4. (a) The auditor of state shall establish a special account to be called the "local road and street

account" and credit this account monthly with forty-five percent (45%) of the money deposited in the highway, road and street fund.

(b) The auditor shall distribute to units of local government money from this account each month. **Before making any other distributions under this chapter, the auditor shall distribute E85 incentive payments to all political subdivisions entitled to a payment under section 8 of this chapter.**

(c) **After distributing E85 incentive payments required under section 8 of this chapter,** the auditor of state shall allocate to each county the **remaining** money in this account on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. The auditor shall further determine the suballocation between the county and the cities within the county as follows:

(1) In counties having a population of more than fifty thousand (50,000), sixty percent (60%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and forty percent (40%) distributed on the basis of the ratio of city and town street mileage to county road mileage.

(2) In counties having a population of fifty thousand (50,000) or less, twenty percent (20%) of the money shall be distributed on the basis of the population of the city or town as a percentage of the total population of the county and eighty percent (80%) distributed on the basis of the ratio of city and town street mileage to county road mileage.

(3) For the purposes of allocating funds as provided in this section, towns which become incorporated as a town between the effective dates of decennial censuses shall be eligible for allocations upon the effectiveness of a corrected population count for the town under IC 1-1-3.5.

(4) Money allocated under the provisions of this section to counties containing a consolidated city shall be credited or allocated to the department of transportation of the consolidated city.

(d) Each month the auditor of state shall inform the department of the amounts allocated to each unit of local government from the local road and street account.

SECTION 3. IC 8-14-2-8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: **Sec. 8. (a) As used in this section, "administrator" has the meaning set forth in IC 6-6-1.1-103(a).**

(b) As used in this section, "E85" has the meaning set forth in IC 6-6-1.1-103(s).

(c) As used in this section, "qualified motor vehicle" means a motor vehicle that may be fueled by E85.

(d) A political subdivision is entitled to a monthly E85 incentive payment under this section if at least seventy-five percent (75%) of the motor fuel purchased by the political subdivision in the preceding calendar month for use in the political subdivision's qualified motor vehicles was E85.

(e) Subject to subsection (i), the amount of a monthly E85 incentive payment to which a political subdivision is entitled under this section is equal to:

(1) the total number of qualified motor vehicles owned by the political subdivision; multiplied by

(2) thirty-three dollars and thirty-three cents (\$33.33).

(f) To claim an E85 incentive payment under this section, the fiscal officer of a political subdivision must present to the auditor of state a statement that:

(1) contains a written verification that the incentive payment claim is made under penalties of perjury; and

(2) sets forth:

(A) the total number of qualified motor vehicles owned by the political subdivision;

(B) the total amount of E85 purchased by the political subdivision in the preceding calendar month for use in each qualified motor vehicle described in clause (A); and

(C) the total amount of motor fuel purchased for use in each qualified motor vehicle described in clause (A).

(g) The auditor of state may request the administrator to make investigations the auditor of state considers necessary before issuing an E85 incentive payment under this section. The administrator shall provide any assistance requested under this section. Upon the request of the administrator, a political subdivision shall furnish to the administrator sufficient documentation to prove the validity of the information presented under subsection (f).

(h) If an E85 incentive payment is not issued within ninety (90) days after filing of the verified statement and all supplemental information required by subsection (g), the auditor of state shall pay interest at the rate established by IC 6-8.1-9 computed from the date of filing of the verified statement and all supplemental information required under this section until a date determined by the auditor of state that does not precede by more than thirty (30) days the date on which the E85 incentive payment is made.

(i) A political subdivision is not entitled to an E85 incentive payment for E85 used in a qualified motor vehicle owned by the political subdivision after December 31 of the fifth calendar year of the political subdivision's ownership of the qualified motor vehicle.

(j) This section expires January 1, 2015.

SECTION 4. IC 15-9-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 5. E85 Fueling Station Grant Program

Sec. 1. As used in this chapter, "E85 base fuel" has the meaning set forth for "E85" in IC 6-6-1.1-103.

Sec. 2. As used in this chapter, "fueling station" refers to tangible property (other than a building and its structural components) consisting of:

(1) a tank;

1 (2) a pump; and
 2 (3) other components;
 3 that is used by a person engaged in the business of selling motor
 4 fuel at retail to enable motor fuel to be dispensed directly into the
 5 fuel tank of a customer's motor vehicle.

6 Sec. 3. As used in this chapter, "location" refers to one (1) or
 7 more parcels of land that:

- 8 (1) have a common access to a public highway; and
 9 (2) are or would appear to the reasonable person making an
 10 observation from a public highway to be part of the same
 11 business.

12 Sec. 4. As used in this chapter, "motor vehicle" means any
 13 vehicle that:

- 14 (1) is manufactured primarily for use on public streets, roads,
 15 and highways (not including a vehicle operated exclusively on
 16 a rail or rails); and
 17 (2) has at least four (4) wheels.

18 Sec. 5. As used in this chapter, "qualified investment" refers to
 19 an ordinary and usual expense that is incurred after June 30, 2007,
 20 to do either of the following:

- 21 (1) Purchase any part of a renewable fuel compatible fueling
 22 station for the purpose of:
 23 (A) installing the new renewable fuel compatible fuel
 24 station at a location on which a fueling station is not
 25 located; or
 26 (B) converting an existing fueling station that is not a
 27 renewable fuel compatible fueling station into a fueling
 28 station that is a renewable fuel compatible fueling station.
 29 (2) Refit any part of a fueling station that is not renewable
 30 fuel compatible as a renewable fuel compatible fueling station,
 31 including the costs of cleaning storage tanks and piping to
 32 remove petroleum sludge and other contaminants.

33 Sec. 6. As used in this chapter, "renewable fuel compatible"
 34 means:

- 35 (1) capable of storing and delivering E85 base fuel without
 36 contaminants resulting from deterioration from constant
 37 contact with alcohol fuels; and
 38 (2) in conformity with applicable governmental standards, if
 39 any, and other nationally recognized standards applying to
 40 storage and handling of E85 base fuel, as determined under
 41 the standards prescribed by the department.

42 Sec. 7. (a) The department may award a grant under this
 43 chapter to a person that:

- 44 (1) makes a qualified investment; and
 45 (2) places the qualified investment in service;

46 in Indiana for the dispensing of E85 base fuel into the fuel tanks of
 47 motor vehicles.

48 (b) A recipient of a grant awarded under this chapter must
 49 comply with any guidelines developed by the state department of
 50 agriculture's office of energy and defense development.

51 Sec. 8. (a) Subject to subsection (b), the state department of

1 agriculture's office of energy and defense development shall
2 determine the amount of each grant awarded under this chapter.

3 (b) The amount of a grant awarded under this chapter may not
4 exceed the lesser of the following:

5 (1) The amount of the person's qualified investment.

6 (2) Five thousand dollars (\$5,000) for all qualified investments
7 made by the person at a single location.

8 Sec. 9. The department shall do the following:

9 (1) Prepare and supervise the issuance of public information
10 concerning the grant program established under this chapter.

11 (2) Prescribe the form for and regulate the submission of
12 applications for grants under this chapter.

13 (3) Determine an applicant's eligibility for a grant under this
14 chapter.

15 Sec. 10. The total amount of grants awarded under this chapter
16 for all state fiscal years may not exceed one million dollars
17 (\$1,000,000).

18 Sec. 11. (a) The E85 fueling station grant fund is established to
19 provide grants under this chapter.

20 (b) The fund consists of appropriations from the general
21 assembly.

22 (c) The treasurer of state shall invest the money in the fund not
23 currently needed to meet the obligations of the fund in the same
24 manner as other public funds may be invested.

25 (d) The money in the fund at the end of a state fiscal year does
26 not revert to the state general fund but remains in the fund to be
27 used exclusively for purposes of this chapter.

28 (e) Money in the fund is continuously appropriated for the
29 purposes of this chapter.

30 Sec. 12. A grant awarded under this chapter is not subject to
31 taxation under IC 6-3-1 through IC 6-3-7.

32 Sec. 13. A grant awarded under this chapter does not reduce the
33 basis of the qualified property for purposes of determining any
34 gain or loss on the property when the grant recipient disposes of
35 the property.

36 SECTION 5. [EFFECTIVE JULY 1, 2007] IC 6-2.5-7-5, as
37 amended by this act, applies to reporting periods ending after June
38 30, 2007.

39 SECTION 6. [EFFECTIVE JULY 1, 2007] (a) There is
40 appropriated to the department of agriculture one million dollars
41 (\$1,000,000) from the state general fund for deposit in the E85
42 fueling station grant fund established under IC 15-9-5, as added by
43 this act, beginning July 1, 2007, and ending June 30, 2008.

44 (b) This SECTION expires July 1, 2008.

45 SECTION 7. [EFFECTIVE JANUARY 1, 2008] (a) IC 8-14-2-8,
46 as added by this act, applies to a political subdivision's purchase of
47 E85 (as defined in IC 6-6-1.1-103(s)) occurring after December 31,
48 2007.

49 (b) A political subdivision may not claim an E85 incentive
50 payment for any purchase of E85 occurring after December 31,
51 2014.

(Reference is to ESB 270 as reprinted April 3, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 270

Signed by:

Senator Heinold
Chairperson

Representative Grubb

Senator Lewis

Representative Ulmer

Senate Conferees

House Conferees